

Department of the Navy, DoD

§ 776.71

of the jurisdiction in which they are licensed. While covered attorneys remain subject to the governing authority of the jurisdiction in which they are licensed to practice, they are also subject to subpart B of this part.

(2) When covered USG attorneys are engaged in the conduct of Navy or Marine Corps legal functions, whether serving the Navy or Marine Corps as a client or serving an individual client as authorized by the Navy or Marine Corps, the provisions contained in subpart B of this part supersede any conflicting rules applicable in jurisdictions in which the covered attorney may be licensed. However, covered attorneys practicing in State or Federal civilian court proceedings will abide by the rules adopted by that State or Federal civilian court during the proceedings. As for covered non-USG attorneys practicing under the supervision of the JAG, violation of the provisions contained in subpart B of this part may result in suspension from practice in DoN proceedings.

(3) Covered non-USG attorneys, Reservists, or Retirees (acting in their civilian capacity) who seek to provide legal services in any DoN matter under JAG cognizance and supervision, may be precluded from such practice of law if, in the opinion of the JAG (as exercised through this rule) the attorney's conduct in any venue renders that attorney unable or unqualified to practice in DoN programs or proceedings.

§ 776.71 Requirement to remain in good standing with licensing authorities.

(a) Each officer of the Navy appointed as a member of the JAG Corps, each officer of the Marine Corps designated a judge advocate, and each civil service and contracted civilian attorney who practices law under the cognizance and supervision of the JAG shall maintain a status considered "in good standing" at all times with the licensing authority admitting the individual to the practice of law before the highest court of at least one State, Territory, Commonwealth, or the District of Columbia.

(b) The JAG, the Staff Judge Advocate to the Commandant of the Marine Corps, or any other supervisory attor-

ney may require any covered USG attorney over whom they exercise authority to establish that the attorney continues to be in good standing with his or her licensing authority. Representatives of the JAG or of the Staff Judge Advocate to the Commandant of the Marine Corps may also inquire directly of any such covered USG attorney's licensing authority to establish whether he or she continues to be in good standing and has no disciplinary action pending.

(c) Each covered USG attorney shall immediately report to the JAG if any jurisdiction in which the covered USG attorney is or has been a member in good standing commences disciplinary investigation or action against him or her or if the covered USG attorney is disciplined, suspended, or disbarred from the practice of law in any jurisdiction.

(d) Each covered non-USG attorney representing an accused in any court-martial or administrative separation proceeding shall be a member in good standing with, and authorized to practice law by, the bar of a Federal court or of the bar of the highest court of a State, or a lawyer otherwise authorized by a recognized licensing authority to practice law and found by the military judge to be qualified to represent the accused.

(e)(1) Generally, the JAG relies on the licensing authority granting the certification or privilege to practice law to define the phrase "good standing." However, as circumstances require, the JAG may, instead, use separate criteria to determine compliance. At a minimum, "good standing" means the individual:

(i) Is subject to the jurisdiction's disciplinary review process;

(ii) Has not been suspended or disbarred from the practice of law within the jurisdiction;

(iii) Is current in the payment of all required fees;

(iv) Has met applicable continuing legal education requirements that the jurisdiction has imposed (or the cognizant authority has waived); and

(v) Has met such other requirements as the cognizant authority has set for eligibility to practice law. So long as these conditions are met, a covered

USG attorney may be “inactive” as to the practice of law within a particular jurisdiction and still be “in good standing” for purposes of subpart B of this part.

(2) Rule for Court-Martial 502(d)(3)(A) requires that any civilian defense counsel representing an accused in a court-martial be a member of the bar of a Federal court or of the bar of the highest court of a State. This civilian defense counsel qualification only has meaning if the attorney is a member “in good standing,” and is then authorized to practice law within that jurisdiction. See *United States v. Waggoner*, 22 M.J. 692 (AFCMR 1986). It is appropriate for the military judge, in each and every case, to ensure that a civilian defense counsel is qualified to represent the accused.

(3) Failure of a judge advocate to comply with the requirements of subpart B of this part may result in professional disciplinary action as provided for in this rule, loss of certification under Articles 26 and/or 27(b), UCMJ, adverse entries in military service records, and administrative separation under SECNAVINST 1920.6 (series) based on the officer’s failure to maintain professional qualifications. In the case of civil service and contracted civilian attorneys practicing under the JAG’s cognizance and supervision, failure to maintain good standing or otherwise to comply with the requirements of subpart B of this part may result in adverse administrative action under applicable personnel regulations, including termination of employment.

(4) A covered USG attorney need only remain in good standing in one jurisdiction. If admitted to the practice of law in more than one jurisdiction, however, and any jurisdiction commences disciplinary action against or disciplines, suspends or disbars the covered USG attorney from the practice of law, the covered USG attorney must so advise the JAG.

(5) An essential time to verify that a judge advocate is currently in good standing is upon accession. Other appropriate times for verification are before a judge advocate is promoted to a higher grade, detailed to a new command, or assigned to duties where there is a statutory requirement to be

a member of the bar, such as a military judge per 10 U.S.C. 826(b). The JAG, the SJA to CMC, or any other supervisory attorney may need to verify the professional qualifications of a judge advocate, either periodically or on an occasional basis. JAGINST 5803.2 (series) establishes a biennial requirement for all covered attorneys to provide proof of good standing.

(6) Certification by the United States Court of Appeals for the Armed Forces that a judge advocate is in good standing with that court will not satisfy the requirement of this section, since such status is normally dependent on Article 27, UCMJ, certification.

§§ 776.72–776.75 [Reserved]

Subpart C—Complaint Processing Procedures

§ 776.76 Policy.

(a) It is JAG’s policy to investigate and resolve, expeditiously and fairly, all allegations of professional impropriety lodged against covered attorneys under JAG supervision.

(b) Rules Counsel approval will be obtained before conducting any preliminary inquiry or formal investigation into an alleged violation of the Rules of Professional Conduct (subpart B of this part) or the ABA Model Code of Judicial Conduct (Code of Judicial Conduct). The Rules Counsel will notify the JAG prior to the commencement of any preliminary inquiry or investigation. The preliminary inquiry and any subsequent investigation will be conducted according to the procedures set forth in this subpart.

§ 776.77 Related investigations and actions.

Acts or omissions by covered attorneys may constitute professional misconduct, criminal misconduct, poor performance of duty, or a combination of all three. Care must be taken to characterize appropriately the nature of a covered attorney’s conduct to determine who may and properly should take official action.

(a) Questions of legal ethics and professional misconduct by covered attorneys are within the exclusive province of the JAG. Ethical or professional